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Supreme Court, U.S.
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No. 04-340

IN THE

Supreme Court of the United States

SAN REMO HOTEL L.P., THOMAS FIELD, ROBERT FIELD, AND T & R INVESTMENT CORP.,
Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT OF CITY PLANNING, CITY PLANNING COMMISSION, BOARD OF PERMIT APPEALS, BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, COUNCIL OF STATE GOVERNMENTS, NATIONAL CONFERENCE OF STATE LEGISLATURES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the Full Faith and Credit Statute, 28 U.S.C. § 1738, bars federal takings claimants from relitigating in federal court legal issues decided adversely to them in state court.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county and municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in the legal issue presented by this case: whether an unsuccessful takings plaintiff who has been provided a full and fair hearing on his claims in state court can later file takings claims in federal court, with no consequence attached to the judgment of the state courts.

Land use regulation is one of the essential functions of state and local governments and is subject to extensive control through state statutes and state and federal constitutional prohibitions against uncompensated takings. Through the mechanism of judicial review, state courts ensure that land use regulators comply with both state and federal law.

Since 1790, the Full Faith and Credit Statute has required that a federal court give the same preclusive effect to a judgment of a state court as would that State's courts. *See* 28 U.S.C. § 1738. This statute is fundamental to the functioning of the federal system. The court of appeals properly applied the statute in this case to bar petitioners from relitigating issues previously decided against them in the state courts.

Because adoption of petitioners' position would result in vexatious, duplicative and wasteful litigation and violate basic principles of federalism, *amici* submit this brief to assist the Court in its resolution of the case.

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[1] The parties have consented to the filing of *amicus curiae* briefs and have filed blanket consent letters with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* or their members has made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

1. Petitioners argue that because *Williamson County Reg. Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), requires a takings plaintiff to exhaust state judicial remedies to ripen a federal takings claim, "the federal courts [are] required to disregard the decision of the state court" and provide them with a hearing on the merits of their federal claim. Pet. Br. 8. To the contrary, the Full Faith and Credit Statute, 28 U.S.C. § 1738, expressly bars this result.

Section 1738 requires a federal court to give a state court judgment the same effect as would that State's courts. If the State's courts would give preclusive effect to determinations of fact and law so must the federal court. This Court has made clear that even if a litigant brings only a state law claim in state court, a subsequent federal court suit raising a federal claim can be precluded if the elements of the federal and state claims are "virtually identical," or if issues relevant to the federal claim were necessarily decided by the state court. *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 479 (1982). Nor is it relevant that the plaintiff was forced to litigate "in a state proceeding in which he would rather not have been engaged at all." *Allen v. McCurry*, 449 U.S. 90, 104 (1980).

What does matter is that petitioners had a full and fair opportunity to litigate their takings claims in the state courts. Not only did petitioners assert a violation of the federal Takings Clause in their first amended complaint in state court, their second amended complaint, while nominally raising claims under the California Constitution, repeatedly invoked the principles of federal takings law.

Moreover, the Supreme Court of California "analyze[d] their takings claim under the relevant decisions of both [that court] and the United States Supreme Court." Pet. App. 131a. Indeed, the majority opinion in the California Supreme Court extensively discussed the application to petitioners' state law

claims of numerous precedents of this Court. Petitioners thus have had a full and fair hearing on the issue of whether the ordinance caused a taking under federal constitutional principles and further litigation is barred by section 1738.

2. While the Full Faith and Credit Statute sets forth Congress's view on what deference the federal courts must give state court judgments, even if this Court were to create a common law rule of preclusion the judgment below should be affirmed. Petitioners argue that because they were required to go to state court to ripen their federal claim, "the federal courts were required to disregard the decision of the state court." Pet. Br. 8. The consequence of petitioners' rule would be that every time a takings plaintiff loses in state court, a federal takings suit could then be brought in federal court.

Indeed, if federal courts are required to disregard the result of state court proceedings, plaintiffs would be able to bring a federal court suit even when there has been a state-court jury determination that no taking has occurred and the jury instructions were correct as a matter of federal law. Moreover, plaintiffs could bring a subsequent federal court suit challenging the amount of compensation awarded in state court as inadequate under the Fifth Amendment's "just compensation" requirement.

Under petitioners' rule, plaintiffs would always have a second chance to prevail and the governmental defendant would have to prevail twice to defeat a takings claim. This system would greatly increase litigation costs for both parties, require the diversion of limited public funds from other programs, and waste scarce judicial resources. Petitioners' rule belittles the role of the state courts and disregards the principles of comity that are the foundation of the federal system. To contend that federal courts are required to disregard the Supreme Court of California's judgment shows disrespect for state courts and undermines public confidence in them.

3. Nor are petitioners' claims reservable under *England v. Louisiana State Bd. of Medical Exam'rs*, 375 U.S. 411 (1964). While *England* sanctions a right to return to federal court to litigate a federal claim, it does so only within the limited circumstance of *Pullman* abstention. *See Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941). There is no general right to reserve claims for adjudication in federal court. *See Allen*, 449 U.S. at 101 n.17. Rather, the right to reserve a claim attaches only where plaintiffs "properly invoke[] federal-court jurisdiction in the first instance on a federal claim" and the federal court orders abstention. *Id.*

Here, the only federal takings claim which was subject to abstention and *England* reservation was petitioners' facial challenge based on the theory that the ordinance did not substantially advance legitimate government interests. *See* 145 F.3d at 1102, 1104-05. In their state court suit, petitioners did not reserve this claim. Rather, they reserved their claim that "[t]he Regulatory Scheme and the City's administrative actions *as applied* to plaintiff violate the Takings Clause of the Fifth and Fourteenth Amendments." J.A. 125 (second amended complaint) (emphasis added). This claim, however, was not properly before the federal courts and was not subject to the court of appeals' abstention order. *See* 145 F.3d at 1102, 1104-05. Thus, petitioners reserved the wrong claim.

Furthermore, there is a fundamental difference between the *Williamson County* rule and *Pullman* abstention that forecloses *England* reservation of federal takings claims. *Pullman* abstention is based "on the desire to improve federal adjudication of federal issues by establishing a certain foundation in state law." 18B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 4471.1 (2004). In contrast, the purpose of the *Williamson County* rule "is to provide state courts an opportunity to supervise state regulatory practices." *Id.* Petitioners' contention that federal courts are "required to disregard" the results of prior state court

proceedings, Pet. Br. 8, manifests a gross disregard "for the rightful independence of . . . state governments," *Pullman*, 312 U.S. at 501, and creates "a potential source of friction between the state and federal judiciaries." *England*, 375 U.S. at 419.[2]

ARGUMENT

THE LOWER FEDERAL COURTS PROPERLY APPLIED THE FULL FAITH AND CREDIT STATUTE, 28 U.S.C. § 1738, TO DISMISS PETITIONERS' TAKINGS CLAIMS

Both the district court and the court of appeals correctly applied federal law in holding that the doctrine of issue preclusion barred petitioners from re-litigating in the federal courts the legal issue of whether respondent's Hotel Conversion Ordinance effectuated a taking. *See* Pet. App. 16a-21a (Ct. App. Op.); *id.* at 37a-44a (Dist. Ct. Op.). In accordance with circuit precedent applying the Full Faith and Credit Statute, 28 U.S.C. § 1738 (*see* Pet. App. 16a (citing *Dodd v. Oregon*, 136 F.3d 1219, 1225 (9th Cir. 1998))), the court of appeals did exactly what the statute required it do. It examined California law and determined that "the state courts would give preclusive effect to the judgment of the state court" because "(1) the issue decided in the prior case [was] identical [to] the one now presented; (2) there was a final judgment on the merits in the prior case, and (3) the party to be estopped was a party to the prior adjudication." Pet. App. 16a (citing *Stolz v. Bank of America*, 15 Cal. App.4th 217, 222 (1993)).

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[2] Several of petitioners' *amici* make the radical suggestion that the Court overrule or modify *Williamson County*'s requirement of exhaustion of state judicial remedies. But not even petitioners seek this result. It is not the question presented, nor is it fairly included therein. *See* Pet. i. Moreover, for reasons explained below at pp. 26-29, the argument of petitioners' *amici* is without merit.

In petitioners' view, *Williamson County Reg. Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), "promised" takings plaintiffs that a federal forum will be available to hear the merits of a federal takings claim upon exhaustion of a State's judicial remedies. *See* Pet. Br. 7. *Williamson County*, however, made no such promise. Although petitioners downplay its importance (*see id.* at 17-19), the Full Faith and Credit Statute is—contrary to petitioners' view—a specific "doctrinal . . . barrier to that result." *Id.* at 7. Petitioners' extraordinary assertion that "because the state court proceedings were required to ripen the federal takings claim under *Williamson County*, the federal courts were required to disregard the decision of the state courts," is irreconcilable with numerous cases applying the statute.

In short, petitioners' position is a prescription for duplicative, wasteful and vexatious litigation. Where, as here, a state court has clearly "analyze[d] [a] takings claim under the relevant decisions of both [the state supreme court] and the United States Supreme Court," *see* Pet. App. 131a, there is no reason to depart from settled precedent and allow plaintiffs two opportunities to litigate their takings claims. Indeed, contrary to the arguments of petitioners' *amici*, there is simply no right to litigate every claim created by federal law in a federal court, let alone do so without regard to the result of prior state court proceedings. The judgment of the court of appeals should therefore be affirmed.

A. *Williamson County* Did Not Overrule The Full Faith And Credit Statute

Petitioners assert that the Court in *Williamson County* "stated clearly and repeatedly, [that] takings plaintiffs may ripen their federal takings claims and then pursue them in federal court." Pet. Br. 10-11. They further contend that "[n]othing in the *Williamson County* opinion even suggests that the outcome of state compensation procedures could

preclude a federal takings claim." *Id.* at 12. Petitioners argue that "[i]t would be both ironic and unfair if the very procedure that the Supreme Court required [takings plaintiffs] to follow before bringing a Fifth Amendment takings claim—a state-court inverse condemnation action—also precluded [them] from ever bringing a Fifth Amendment takings claim." *Id.* (quoting *Santini v. Connecticut Hazardous Waste Management Serv.*, 342 F.3d 118, 130 (2d Cir. 2003)).

Williamson County did not, however, address the applicability of the Full Faith and Credit Statute to a federal takings claim brought in federal court subsequent to a state court judgment. Indeed, nowhere in the opinion's discussion of the *Williamson* plaintiff's failure to seek just compensation through the existing state judicial procedures (or elsewhere in the opinion) did the Court even mention the Full Faith and Credit Statute. *See* 473 U.S. at 175-97.

Thus, it is of no significance that—as petitioners contend—"[n]othing in the *Williamson County* opinion even suggests that the outcome of state compensation procedures could preclude a federal takings claim." Pet. Br. 12. This question was not presented nor reasonably subsumed within the question presented in *Williamson County*. Thus, contrary to petitioners' contention, *Williamson County* did not "promise[]" that "a federal court [would] hear the merits of the federal takings claims . . . they filed in federal court." *Id.*

Indeed, it would have been exceedingly strange for the Court to have made such a promise in light of both the language of the Full Faith and Credit Statute and its cases applying it to various federal claims filed in federal court subsequent to a state court judgment. *See* 28 U.S.C. § 1738; *see also Kremer v. Chemical Constr. Corp.*, 456 U.S. 461 (1982); *Allen v. McCurry*, 449 U.S. 90 (1980). First enacted in 1790, the statute provides that "judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the

courts of such State . . . from which they are taken." 28 U.S.C. § 1738.

The Court has observed that Section 1738 was enacted "specifically to insure that federal courts, not included within the [Constitution's Full Faith and Credit Clause] would be bound by state judgments." *Kremer*, 456 U.S. at 483 n.24 (citing *Davis v. Davis*, 305 U.S. 32, 40 (1938)). The Court has further explained that the statute "goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." *Id.* at 482 (citing *McElmoyle v. Cohen*, 13 Pet. 312, 326 (1839); *Mills v. Duryee*, 11 U.S. (7 Cranch) 481, 485 (1813)).

In *Allen*, which involved a federal court suit brought under the same statute (42 U.S.C. § 1983) petitioners invoked here, the Court expressly rejected the notion "that every person asserting a federal right is entitled to one unencumbered opportunity to litigate that right in a federal district court, regardless of the legal posture in which the federal claim arises." 449 U.S. at 103. As the Court explained, "the authority for this principle is difficult to discern. It cannot lie in the Constitution, which makes no such guarantee, but leaves the scope of the jurisdiction of the federal district courts to the wisdom of Congress." *Id.*[3]

[3] It is well established that some federal claims of right must be litigated in state proceedings. For example, there is an extensive body of jurisprudence holding that where a State provides an adequate remedy, a claim alleging that a state tax violates the federal Constitution must be litigated in state court. *See, e.g. National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586-87 (1995) (discussing Tax Injunction Act, 28 U.S.C. § 1341, and comity doctrine). Likewise, under *Younger v. Harris*, 401 U.S. 37 (1971), a federal district court is barred from enjoining pending state criminal proceedings because federal constitutional rights can be vindicated in the state proceeding. *See also Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986) (barring federal court interference with pending state administrative proceedings even if federal constitutional claims could only be raised in state-court review of agency's decision). And under *Stone v. Powell*, 428 U.S. 465, 494 (1976), a state prisoner cannot bring a federal habeas corpus suit challenging his confinement on the ground that his Fourth Amendment rights were violated if he had "an opportunity for full and fair litigation of [the] claim" in the state courts.

Allen thus held that the plaintiff could not bring a section 1983 suit to relitigate the issue of whether the police violated his Fourth Amendment rights, an issue which had been decided adversely to him in the state criminal proceedings. *See id.* at 92, 104-05. The Court expressly noted that section 1983, like the *Williamson County* opinion relied on by petitioners here, "says nothing about the preclusive effect of state-court judgments." *Id.* at 98. The Court further observed that "nothing in the language or legislative history of § 1983 proves any congressional intent to deny binding effect to a state-court judgment or decision when the state court, acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown itself willing and able to protect federal rights." *Id.* at 103-04.

The Court explained that "[t]here is . . . no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate an issue already decided in state court simply because the issue arose in a state proceeding in which he would rather not have been engaged at all." *Id.* And in addressing whether there is "a universal right to litigate a federal claim in a federal district court," *Allen* expressly rejected the notion that state courts lack "the capacity . . . to render correct decisions on constitutional issues." *Id.* at 105.

In *Kremer*, the Court subsequently made clear that section 1738 bars a federal court suit based on a federal right even when a plaintiff litigated only a state law claim in the state court action. *Id.* at 485. *Kremer* involved a claim of employment discrimination under Title VII, 42 U.S.C. §§ 2000e

et seq. *See* 456 U.S. at 463. Under the Title VII scheme, *see* 42 U.S.C. § 2000e-5(c), the EEOC referred Kremer's complaint to the New York State Division of Human Rights, the agency charged with authority to enforce that State's employment discrimination law. *See* 456 U.S. at 463-64 (citing N.Y. Exec. Law §§ 295(6), 296(1)(a)).

The state agency found that Kremer had not experienced discrimination; this finding was upheld by the agency's appeal board. *See id.* at 464. Kremer then filed a petition for review in the Appellate Division of the New York Supreme Court. *See id.* The court unanimously affirmed the agency's order. *See id.* Kremer declined to seek review by the New York Court of Appeals. *See id.*

Following the EEOC's rejection of Kremer's complaint, Kremer brought suit under Title VII in federal district court. *Id.* at 465. The employer defended on the ground of res judicata. *See id.* Initially the district court rejected the defense but after the court of appeals held in another case that a state determination was res judicata in a Title VII action, the district court dismissed the case. *See id.* at 465-66. The court of appeals affirmed. *See id.* at 466.

This Court upheld that judgment. *See id.* The Court acknowledged that under Title VII, "the federal courts were entrusted with ultimate enforcement responsibility." *Id.* at 468. The Court recognized that under the federal scheme "no charge of discrimination may be actively processed by the EEOC until the state remedy has been invoked and at least 60 days have passed, or the state proceedings have terminated." *Id.* at 469 (citing 42 U.S.C. § 2000e-5(c)). The Court also noted that "[n]o provision of Title VII requires claimants to pursue in state court an unfavorable state administrative action" and that it had "interpreted the 'civil action' authorized to follow consideration by federal and state administrative *agencies* to be a 'trial *de novo*.'" *Id.* (quoting *Chandler v. Roudebush*, 425 U.S. 840, 844-45 (1976)) (other citations omitted).

The Court observed, however, that "neither the statute nor our decisions indicate that the final judgment of a state *court* is subject to redetermination at such a trial." *Id.* at 470. And while Title VII requires the EEOC to "give 'substantial weight' to findings made in state proceedings, [the statute] indicates only the minimum level of deference the EEOC must afford all state determinations; it does not bar affording the greater preclusive effect which may be required by § 1738 if judicial action is involved." *Id.* The Court reasoned that its earlier decisions holding "that *initial resort* to state administrative remedies does not deprive an individual of a right to a federal trial *de novo* on a Title VII claim . . . is not a holding that a prior state court judgment can be disregarded." *Id.* at 477 (citing *Chandler*, 425 U.S. 840; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). And the Court further explained that although Congress vested "'final responsibility for enforcement of Title VII . . . with federal courts,'" this did not imply that "Congress intended to deny finality to decisions in" the state courts. *Id.* (quoting *Alexander v. Gardner-Denver*, 415 U.S. 36, 44 (1974)).

Most significantly for this case, it did not matter that the claims Kremer "presented to the [state agency] and subsequently reviewed by the [New York courts] were necessarily based on New York law." *Id.* at 479. As the Court reasoned, "the alleged discriminatory acts are prohibited by both federal and state laws. The elements of a successful employment discrimination claim are virtually identical[.]" *Id.* (footnote omitted). The Court therefore held: "[t]he Appellate Division's affirmance of the [state agency's] dismissal necessarily decided that petitioner's claim under New York law was meritless, and thus it also decided that a Title VII claim arising from the same events would be equally meritless." *Id.* at 480.

Allen and *Kremer* thus establish that the Full Faith and Credit Statute requires a federal district court to give preclusive effect to those issues of both fact and law which were

decided in a state court proceeding. As the Court explained in *Allen*, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." 449 U.S. at 94 (citing *Montana v. United States*, 440 U.S. 147, 153 (1979)). Moreover, as *Kremer* demonstrates, it does not matter that the state court proceeding was based only on a state law claim. *See* 456 U.S. at 479. Finally, it is irrelevant that the plaintiff was forced to litigate "in a state proceeding in which he would rather not have been engaged at all." *Allen*, 449 U.S. at 104.[4]

What does matter is that petitioners had "a full and fair opportunity to litigate the . . . issue" in the state courts. *Id.* at 101. In their first amended complaint in state court, petitioners alleged that "'[t]he City's ordinances and its administrative actions regarding the San Remo violate plaintiffs' *federal and state constitutional rights* in that they fail to substantially advance legitimate government interests *as required by the Takings Clause of the Fifth Amendment to the United States Constitution* and Article I, Section 19, of the California Constitutional [*sic*].'" *San Remo Hotel, L.P. v. City of San Francisco*, 83 Cal.App.4th 239, 247 (2000) (quoting petitioners' third cause of action) (emphasis added). The complaint further alleged that "[t]he application of the City's ordinances to plaintiffs forces them, and a small group of other property owners, to bear the full cost of providing a general public benefit: housing for low income, elderly and disabled San Francisco residents. *This violates the Takings Clause. . . .*" *Id.* (emphasis added).[5]

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[4] It should be noted that petitioners voluntarily invoked *Pullman* abstention and sought to return to state court. *See* 145 F.3d at 1104-05. It is also significant that petitioners did not seek to return to state court until they lost in the federal district court. *See id.* at 1100-01.

[5] The California Court of Appeals' discussion of the proceedings in the California Superior Court casts serious doubt on petitioners' assertion that "the state court did not even consider the federal constitutional claim, much less rule on it." Pet. Br. 8. The Superior Court clearly ruled on the City's demurrer to petitioners' takings claim, which was expressly based on the federal Takings Clause. *See* 83 Cal. App.4th at 248. The trial court ruled on the merits of petitioners' facial takings challenge, rejecting it not once but twice. *Id.* Even if the facial takings challenge in the second amended complaint no longer alleged a violation of the Fifth Amendment, having suffered an adverse ruling on the merits with respect to the federal facial challenge raised in the first amended complaint petitioners were required to appeal the dismissal of the federal claim in the state courts. Their failure to do so should be deemed a waiver and bar to relitigation of that claim in the federal courts. Nor is petitioners' "as-applied" federal claim properly before the federal courts. *See* discussion *infra* at p. 24.

Moreover, while in their second amended complaint petitioners separately pleaded their state and federal takings claims, it is clear that the state takings claims were based on this Court's Fifth Amendment jurisprudence. For example, petitioners' second cause of action, which was based on inverse condemnation, alleged that the zoning administrator's classification of their property and the replacement housing fee "amounts to just the sort of exaction which could be classified, not as 'a valid regulation of land use but an out-and-out plan of extortion.'" J.A. 104-05 (¶ 22) (quoting *Seawall Associates v. City of New York*, 542 N.E.2d 1059, 1070 (N.Y. 1989) (other quotations omitted)). Beyond the fact that the key language attributed to the New York Court of Appeals comes directly from *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987) (citation omitted), it would be strange to rely on an opinion of the New York Court of Appeals for a correct statement of the California law of takings. Rather, petitioners' state takings theory was based on the federal standard, as was their allegation that the zoning administrator's classification of their property "precludes all economically viable use of [their] property." J.A. 105 (¶ 24). *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1016 (1992) (quoting *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980) (other citations omitted)).

Petitioners' third cause of action, which was also based on inverse condemnation, alleged that the replacement housing fee "is not roughly proportional to the impact of the historically permitted . . . use of the San Remo," that "the fee fails to substantially advance a legitimate government interest," and that "[t]he requirement of the fee denies San Remo economically viable use of the hotel." J.A. 107 (¶ 30). The source of the first formulation is *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), the second *Agins* and other cases, *see* 447 U.S. at 260, and the third *Lucas*, *Agins* and *Penn Central*. *See Lucas*, 505 U.S. at 1015-16, *Agins*, 447 U.S. at 260, *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 138 n.36 (1978)). The same cause of action further alleged that "[a]s a direct result of the City's conduct, plaintiffs are also being deprived of their reasonable investment backed expectation." J.A. 118 (¶ 62). This, too, is a formulation of federal takings law. *See Penn Central*, 438 U.S. at 124 ("interfere[nce] with distinct investment-backed expectations" is a "relevant consideration[]").

Petitioners' fourth and fifth causes of action in state court are also based on this Court's jurisprudence, alleging that the HCO and fee "fails to substantially advance legitimate government interests, deprives plaintiffs of the opportunity to earn a fair return on their investment, [and] denies plaintiffs economically viable use of their property." J.A. 119 (¶ 68); *id.* at 120 (¶ 69). *See also id.* at 120 (¶ 73) ("[t]he City's application of its legislative scheme to the San Remo does not substantially advance a legitimate government interest"); *id.* at 121 (¶ 74; alleging that government cannot "forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole"); *compare with Armstrong v. United States*, 364 U.S. 40, 49 (1960); J.A.121 (Complaint ¶ 75; repeating allegation that fee is not "a valid regulation of land use but an out-and-out plan of extortion") (citation & quotations omitted); *compare with Nollan*, 483 U.S. at 837; J.A. at 122 (¶ 77; "The City's ordinances and defendants' administrative actions also preclude all economically viable use of plaintiffs' property."); *compare with Lucas*, 505 U.S. at 1015-16.

Moreover, the judges of the California state courts did exactly what the Supremacy Clause of the federal Constitution required them to do. *See* U.S. Const. art. VI, cl. 2. Notwithstanding that petitioners' takings claims in the second amended complaint were brought only under the California Constitution, the Supreme Court of California "analyze[d] [petitioners'] takings claim[s] under the relevant decisions of both [the state supreme court] and the United States Supreme Court." Pet. App. 131a (opinion of the Supreme Court of California). Indeed, the majority opinion of the state supreme court extensively discussed the application to petitioners' state takings claims of the principles this Court articulated in *Nollan* and *Dolan*, as well as other relevant federal precedents. *See id.* at 132a-37a, 140a-43a (discussing *Nollan* and *Dolan*). *See also id.* at 131a (citing *Lucas*, 503 U.S. at 1015, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 493-501 (1987); *Penn Central*, 438 U.S. at 124); *id.* at 139a n.12 (citing *Penn Central*, 438 U.S. at 132); *id.* at 143a (citing *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999)); *id.* at 143a-44a (citing *Penn Central*, 438 U.S. at 133); *id.* at 148a-49a (discussing applicability of *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922), *Keystone*, 480 U.S. at 491 & n.21, & *Agins*, 447 U.S. at 262); *id.* at 149a-52a (discussing *Agins* & *Penn Central*).

The opinions of the concurring and dissenting justices in the state supreme court also extensively discussed this Court's takings jurisprudence. *See id.* at 165a-66a (Baxter, J., concurring and dissenting) (noting agreement "with the majority that in-lieu fees assessed under the HCO are not subject to the 'rough proportionality' test articulated in *Dolan*," and that the applicable "legal standard" is that "'[a] land use regulation does not effect a taking if it "substantially

advances legitimate state interests"'") (quoting *Dolan*, 512 U.S. at 385). *See also id.* at 166a (discussing *Del Monte Dunes* & *Nollan*), *id.* at 181a-82a, 184a (Brown, J., dissenting) (discussing *Nollan* & *Dolan*), *id.* at 189a-92a (discussing *Pennsylvania Coal* & *Penn Central*).

Where, as here, the state courts provided petitioners with a full and fair opportunity to litigate the issue of whether the city took plaintiffs' property, the requirements of the Full Faith and Credit Statute are met. And while it is clear that under this Court's precedents the City did not take petitioners' property, even if the Supreme Court of California erred in its application of federal law to their state claim, petitioners are not entitled to relitigate the issue in federal court. As the Court has explained, plaintiffs cannot "relitigat[e] federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous." *Allen*, 449 U.S. at 101. [6]

B. Even If Federal Courts Were Authorized To Create Federal Common Law Regarding The Effect To Be Given State Court Judgments, Petitioners' Rule Would Be Ill-Advised

As explained above, by enacting § 1738 Congress has spoken on the matter of what deference the federal courts must give the judgment of the Supreme Court of California in this case. Under the Full Faith and Credit Statute, the federal courts are not free to create their own rules as to what effect a

[6] Petitioners ignore that the Ninth Circuit extensively reviewed the Supreme Court of California's analysis of the federal precedents to ensure that the state court's reasoning was "equivalent to the approach taken in this circuit." Pet. App. 19a-21a. While this occurred in the context of ruling on the applicability of section 1738, a fair reading of the opinion shows that the court of appeals' analysis is essentially the same as a ruling that petitioners had failed to state a claim upon which relief could be granted.

state court judgment has in federal court. *See, e.g., Kremer*, 456 U.S. at 481-82. *Cf. Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001) ("*this* Court . . . has the last word on the claim-preclusive effect of *all* federal judgments"). But even if the degree of respect that a federal court owes a state court judgment were a matter of federal common law, the result sought by petitioners would be unwarranted.

Petitioners contend that "because the state court proceedings were required to ripen the federal takings claim under *Williamson County*, the federal courts were required to disregard the decision of the state court." Pet. Br. 8. Petitioners further argue that it is "unfair" to bar their takings claims from federal court. *Id.* at 8-9 (quoting *Santini*, 342 F.3d at 130.) What would be "unfair," however, would be to allow petitioners to relitigate issues that they have already argued and lost in state court proceedings.

Indeed, were a judgment in a state court takings case to have no preclusive effect on a federal takings claim filed in federal court, the federal courts would be inundated with duplicative takings litigation. The consequence of petitioners' rule would be that every time a takings plaintiff lost in state court, a federal takings suit would likely then be brought in federal court.

Under petitioners' view, plaintiffs could—as petitioners have done here—bring a federal takings suit challenging a state court holding that the allegations of the complaint do not establish a taking. Likewise, if federal courts are "required to disregard" the results of state court proceedings, Pet. Br. 8, plaintiffs would be able to bring a federal court suit even when there has been a state court jury determination that no taking has occurred. *Cf. Del Monte Dunes*, 526 U.S. at 720-21 ("the issue whether a landowner has been deprived of all economically viable use of his property is a predominately factual question" and thus "for the jury"); *id.* at 721 (holding that whether the City of Monterey's actions in reviewing

development applications "substantially advance[d] legitimate public interests" was a jury question). *See also Alabama DOT v. Land Energy, Ltd.*, 886 So.2d 787 (Ala. 2004) (jury trial on regulatory takings claim); *Drake v. Town of Sanford*, 643 A.2d 367, 369 (Me. 1994) (jury verdict on whether ordinance substantially advanced legitimate government interests); *Corey v. Town of Merrimack*, 666 A.2d 1359, 1360 (N.H. 1995) (jury trial on whether property owner "was substantially deprived of the economically viable use of the land"). And they could do so even when the state jury instructions were correct as a matter of federal law.

Moreover, if a state judgment has no preclusive effect, plaintiffs could bring a subsequent federal court suit challenging whether the amount of compensation awarded in the state court proceeding was constitutionally adequate under the Fifth Amendment's "just compensation" requirement. And takings plaintiffs could do so even when they had a jury trial in state court on the issue. This would hold true whether the Fifth Amendment claim arose out of an inverse condemnation action as in this case or an eminent domain proceeding.

The net result of petitioners' position is that takings plaintiffs would always have two separate opportunities to prevail by filing actions: first in state court and, if unsuccessful, thereafter in federal court. Concomitantly, the governmental defendant would have to prevail not once but twice.

Such a system has nothing to commend it. Not only would it greatly increase litigation costs for both parties, it would be especially burdensome on governmental defendants as it would require the diversion of limited public funds from other programs to pay legal fees and other litigation costs. Moreover, it would waste scarce judicial resources. *See Allen*, 449 U.S. at 94; *Montana v. United States*, 440 U.S. at 153-54.

Petitioners' view ignores the role of the state courts and disregards the principles of comity that are the foundation of the federal system. By virtue of the Supremacy Clause, *see* U.S. Const. art. VI, cl. 2, state judges are bound to abide by this Court's takings jurisprudence in interpreting state law and adjudicating state takings claims. *Cf. Testa v. Katt*, 330 U.S. 386, 394 (1947); *see also Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 275 (1997) (principal op. of Kennedy, J.) ("Interpretation of federal law is the proprietary concern of state, as well as federal, courts."). As explained above, the Justices of the Supreme Court of California fully satisfied their obligation to respect federal rights under the Fifth Amendment in interpreting the California Constitution. *See* discussion *supra* at pp. 15-16.[7] They clearly applied federal law in analyzing the merits of petitioners' state law claims.

Petitioners further assert that "[t]he practical effect of the Ninth Circuit's rule . . . when combined with the ripeness requirement of *Williamson County* is that federal takings claims can never be considered on the merits in any federal court, including this Court." Pet. Br. 14. That is simply untrue.[8] Petitioners could have pursued their federal claims in

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[7] *See also Santa Monica Beach, Ltd., v. Santa Monica Rent Control Bd.*, 968 P.2d 993, 998 (Cal. 1999) ("We begin by recognizing the well-established case law of the United States Supreme Court . . . ."); *Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851, 860 (Cal. 1997) ("[E]ven if we did intend to interpret the state [takings clause] more narrowly than the federal right, the federal Constitution would nevertheless apply here to protect Kavanau.").

[8] Petitioners erroneously assert that "[a]ll seven justices of the California Supreme Court stated that they expected that the Field Brothers would obtain a ruling on the merits of their federal claims in this federal court action." Pet. Br. 15 n.2 (citing Pet. App. 107a n.1). While the California Supreme Court majority acknowledged that petitioners "explicitly reserved their federal causes of action," Pet. App. 107a n.1, they expressed no view on whether the Full Faith and Credit Statute would preclude relitigation in the lower federal courts of issues that the state courts had already decided. Similarly, the opinion concurring in part

state court—indeed they initially did exactly that with respect to their facial challenge, *see* 83 Cal.App.4th at 247—and sought review in this Court if the state courts denied their claims. Even if the state courts would have treated some of petitioners' federal claims as unripe at the time the lawsuit was filed—a dubious assertion on their part given the numerous instances in which federal takings claims have been adjudicated on the merits along with state law claims, *see* cases cited *infra* at pp. 22-23, the claims would have eventually ripened and the state courts would have rendered a judgment on them. That judgment would have been reviewable in this Court.

To contend as petitioners do that the federal courts are required to disregard the Supreme Court of California's judgment is insulting to the judges of state court systems and undermines public confidence in the state courts as institutions. Under petitioners' position, *see* Pet. Br. 15, it is not, as they assert, the Fifth Amendment which is diminished in significance, but rather the state courts which are "relegated to the status of a poor relation" of their federal counterparts. *Dolan*, 512 U.S. at 392.

This Court long ago rejected the notion that the state courts lack "the capacity . . . to render correct decisions on constitutional issues" and has repeatedly expressed its "confidence in their ability to do so." *Allen*, 449 U.S. at 105. Indeed, "[a] doctrine based on the inherent inadequacy of state forums would run counter to basic principles of federalism." *Coeur d'Alene Tribe*, 521 U.S. at 275 (principal op. of Kennedy, J.) And in elevating the Takings clause to the

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and dissenting in part does no more than express those justices' understanding of petitioners' intentions. *See id.* at 170a ("Plaintiffs have reserved their federal claims and, if rebuffed here, will resume their federal litigation, which is now subject to *Pullman* abstention."). This statement says nothing about whether § 1738 would bar relitigation of issues already decided adversely to them under the same legal standard. *Cf. Kremer*, 456 U.S. at 479-80.

status of favored son in contrast to other federal rights, which cannot be relitigated in federal court following an adequate state court proceeding, petitioners do not explain why the Takings clause warrants such treatment. *Cf. Hickerson v. City of New York*, 146 F.3d 99, 103 (2d Cir. 1998) (applying issue preclusion to bar First Amendment claim brought in federal court following state court's rejection of state constitutional claim because "the same issues . . . were resolved against [plaintiffs] in state court"); *see also id.* at 112 (observing that "the issues decided and the standards applied by the New York courts are the same as those that would be dispositive under the First Amendment").

C. Petitioners' Claims Are Not Exempt From Preclusion Under Section 1738

When petitioners finally address the relevance of section 1738 to this case, they distort the significance of this Court's holdings in *Allen* and *Migra*, asserting that they "only hold that there is no blanket exemption from issue and claim preclusion for suits brought under § 1983." Pet. Br. 17. As explained above, however, these cases establish "that issues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the State where the judgment was rendered." *Migra v. Warren City School Dist.*, 465 U.S. 75, 83 (1984) (citing *Allen*, 449 U.S. at 97-99). *Migra* further holds that § 1983 "does not override state preclusion law and guarantee petitioner a right to proceed to judgment in state court on her state claims and then turn to federal court for adjudication of her federal claims." *Id.* at 85. Thus, if California law would bar litigation of a claim that could have been but was not raised in an earlier proceeding, the Full Faith and Credit Statute requires that a federal court dismiss the claim.

"In our system of jurisprudence the usual rule is that merits of a legal claim once decided in a court of competent jurisdiction are not subject to redetermination in another

forum." *Kremer*, 456 U.S. at 485. Contrary to the views of petitioners, *see* Pet. Br. 17-19, the exceptions to the application of section 1738 are limited. One exception is "where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court." *Allen*, 449 U.S. at 101. But as shown above, the California courts clearly provided petitioners with a full and fair hearing on the issue of whether the City's ordinance caused a taking of their property under the applicable federal principles. *See* discussion *supra* at pp. 13-16.

Nor can petitioners deny that the California courts provided them a full and fair opportunity to litigate their federal claims. Petitioners categorically assert that "the California courts could not have decided the federal takings claims because those claims are subject to the same ripeness requirements when brought in state court as they are in federal court." Pet. Br. 15 (citing *Breneric Associates v. City of Del Mar*, 69 Cal.App.4th 166 (1998)). The authority they cite for this proposition, however, is not the Supreme Court of California, which has the last word on California law, but an intermediate appellate court whose decisions are not controlling beyond its own geographic area and was not binding precedent in their case. *See* 9 Witkin, Cal. Proc. 4th *Appeal*, § 934, at 971 (1997) ("One district or division may refuse to follow a prior decision of a different district or division.").

Most tellingly, the Supreme Court of California has adjudicated federal takings claims arising in several cases arising in the same procedural posture as plaintiff's state court suit—that is, where the federal claim is litigated simultaneously with the state law claim. *See Santa Monica Beach, Ltd. v. Santa Monica Rent Control Bd.*, 968 P.2d 993, 1000-07 (Cal. 1999) (adjudicating merits of federal takings claim brought in inverse condemnation case); *Kavanau v. Santa Monica Rent Control Bd.*, 941 P.2d 851 (Cal.1997) (same); *Ehrlich v. City of Culver City*, 911 P.2d 429, 435 (Cal.1996) (petition for

writ of mandate and complaint for damages). Moreover, having failed to pursue these claims in the state courts—and notwithstanding that petitioners initially litigated their facial federal takings claim in the state courts, *see* discussion *supra* at 12—petitioners cannot claim that the California courts denied them a fair opportunity to litigate their federal claims.

No more persuasive is petitioners' attempt to prevent the application of section 1738 by invoking *England v. Louisiana State Bd. of Med. Exam'nrs*, 375 U.S. 411 (1964). *See* Pet. Br. 17-18; *see also id.* at 12-14. True enough, *England* sanctions a right to return to federal court to litigate a federal claim. But it does so only within the limited circumstance of abstention under *Railroad Comm'n v. Pullman Co., Inc.*, 312 U.S. 496 (1941), where a federal court exercises its equitable discretion to refrain temporarily from deciding a case because of unsettled issues of state law and to prevent needless friction with state policy. As *Allen* explains:

> The holding in *England* depended entirely on this Court's view of the purpose of abstention in such a case: Where a plaintiff properly invokes federal-court jurisdiction in the first instance on a federal claim, the federal court has a duty to accept that jurisdiction. Abstention may serve only to postpone, rather than to abdicate, jurisdiction, since its purpose is to determine whether resolution of the federal question is even necessary, or to obviate the risk of a federal court's erroneous construction of state law.

449 U.S. at 101 n.17 (quoting *England*, 375 U.S. at 415, 416 & n.7).

Petitioners cannot invoke *England* to avoid the application of section 1738 for several reasons. First, as *Allen* demonstrates, there is no general right to reserve claims for adjudication in federal court. Rather, the right to reserve arises only when a plaintiff "properly invokes federal-court jurisdiction in the first instance on the federal claim," *id.*, and the federal court orders abstention.

Here, the only one of petitioners' federal takings claims which was properly brought in federal district court in the first instance and thus subject to *England* reservation was their facial challenge based on the theory that the ordinance did not substantially advance legitimate government interests. *See* 145 F.3d at 1102, 1104-05; *see also Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). But this was the same claim which petitioners litigated in the state courts. *See* 83 Cal. App.4th at 247 (quoting first amended complaint in state court) ("The City's ordinances and its administrative actions regarding the San Remo violate plaintiffs' federal and state constitutional rights in that they fail to substantially advance legitimate government interests as required by the Takings Clause of the Fifth Amendment to the United States Constitution and Article I, Section 19 of the California Constitutional [*sic*].").

Petitioners' second amended state court complaint, however, did not reserve their facial challenge. Rather, petitioners reserved their federal claim that "[t]he Regulatory Scheme and the City's administrative actions *as applied* to plaintiff violate the Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution." J.A. 125 (emphasis added). This claim, however, was unripe and not properly before the federal courts, and not subject to the court of appeals' abstention order. *See* 145 F.3d at 1105 ("We reverse the district court's dismissal of Field's facial takings claim and remand with instructions to enter a stay under *Pullman*.") (footnoted omitted). Thus, petitioners reserved the wrong claim.

Moreover, even if the Court were to overlook petitioners' procedural default, expanding the *England* rule to as-applied takings claims would untether the doctrine from its analytical moorings. In contrast to the discretionary nature of *Pullman*, the text of the Fifth Amendment requires a plaintiff seeking compensation to pursue a State's takings remedies, including

judicial remedies. *See Williamson County*, 473 U.S. 194-95 & n.13. *See also* Pet. Br. 13 ("*Williamson County*'s ripeness requirement is mandated by the Fifth Amendment").

Moreover, the purpose of the *Williamson County* rule is fundamentally different than that served by *Pullman* abstention. As a leading authority observes, "the purpose of [the *Williamson County*] ripeness doctrine is to provide state courts an opportunity to supervise state regulatory practices." 18B Charles A'an Wright *et al.*, *Federal Practice and Procedure* § 4471.1 (2004). As Wright & Miller further explain:

> The reasons for denying an opportunity to reserve federal questions in these circumstances seem reasonably clear. The policies that compel prior resort to state courts are different from the policies of "Pullman" abstention, and reflect a different balance between the imperative of federal subject-matter jurisdiction and deference to state interests. Pullman abstention rests on the desire to improve federal adjudication of federal issues by establishing a certain foundation in state law. In a real sense, the very purpose of resort to state court is to support the eventual return for federal adjudication of federal questions properly brought to federal court. In these other settings, prior resort to state court is compelled by policies that include a desire to support the role of state adjudication.

Id.

Thus, totally without merit is petitioners' suggestion that "any procedural difference between the *Williamson County* ripeness doctrine and the *Pullman* abstention doctrine 'is not a meaningful one.'" Pet. Br. 13 (quoting *Santini v. Connecticut Hazardous Waste Mgmt. Serv.*, 342 F.3d 118, 129 (2d Cir. 2003)). Not only is there a meaningful procedural difference between the two—in *Pullman* the federal district court retains jurisdiction, while in *Williamson* the federal claim is dismissed—there is also a fundamental difference in

the policies which the rules effectuate. Indeed, it is petitioners' contention that federal courts are "required to disregard the decision of the state court," Pet. Br. 8, that manifests a gross disregard "for the rightful independence of the state governments" and would strain the "harmonious relation[s] between state and federal authority." *Pullman*, 312 U.S. at 501 (internal quotations and other citations omitted).[9] *See also England*, 375 U.S. at 419 (allowing relitigation in federal court of claims submitted to state court "would . . . be a potential source of friction between the state and federal judiciaries"). The Court should therefore reject this incongruous, unnecessary and unwarranted result.

D. The Court Should Disregard The Suggestion Of Petitioners' *Amici* To Overrule *Williamson County*

Several *amici* supporting petitioners urge this Court to overrule *Williamson County* or modify it by abolishing the requirement that takings plaintiffs pursue their compensation

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[9] *Amici* agree with the City that the court of appeals properly applied California law in holding that the California courts would apply the doctrine of issue preclusion to bar petitioners from relitigating the issues. *See* Pet. App. 16a-21a. As the court of appeals stated, the Supreme Court of California expressly recognized that "it had construed [the state and federal takings] clauses congruently," and that "in reaching its decision on the merits of the plaintiffs' state takings claims, it applied 'the relevant decisions of both this court and the United States Supreme Court.'" *Id.* at 17a (quoting 27 Cal. 4th at 664), *reprinted at* Pet. App. 130a. As noted by the court of appeals, petitioners "were a party to the state court adjudication" and there "was a final judgment on the merits." *Id.* at 16a. Moreover, "the facial and as-applied takings challenges raised in state court are identical to the federal claims asserted by the plaintiffs, and are based on the same factual allegations." *Id.* at 17a. Accordingly, under California preclusion law, "the issue decided in the prior case is identical with the one now presented." *Id.* at 16a (citing *Stolz*, 15 Cal. App.4th at 222); *see also Coscia v. McKenna & Cuneo*, 25 P.3d 670, 673 n.1 (Cal. 2001) ("the issue necessarily decided in the previous proceeding is identical to the one that is sought to be relitigated").

claims in the state courts. *See, e.g.*, Br. *Am. Cur.* Defenders of Property Rights 7-18; Br. *Am. Cur.* Franklin P. Kottschade 4-15. The Court should reject this radical suggestion for several reasons.

First, not even petitioners seek this result. It is not the question presented, *see* Pet. i, nor is it "'fairly included therein.'" *Yee*, 503 U.S. at 535 (quoting S.Ct. Rule 14.1(a)). Rather, the issue in this case is whether a federal court must apply principles of issue preclusion to state court proceedings undertaken to comply with *Williamson*. Beyond that, petitioners are precluded from arguing that *Williamson* should be overruled because upon reaching the federal court of appeals they voluntarily sought to return to state court by invoking *Pullman*. *See* 145 F.3d at 1104. Petitioners' *amici* simply ignore these dispositive aspects of this case.

Several of petitioners' *amici* attempt to portray the *Williamson* rule as creating a unique class of federal claimants who are required to litigate their claims in state court. *See, e.g.*, Br. *Am. Cur.* Kottschade 20 ("Lower courts have misused *Williamson County* as a device to prevent property owners—alone among citizens—from litigating federal constitutional issues in federal court."); Br. *Am. Cur.* Defenders of Property Rights 17 ("[N]o other class of federal constitutional plaintiffs are [sic] so routinely shut out of the federal courthouse.").

These assertions are, however, just plain wrong. For example, plaintiffs challenging state taxes as violative of federal law have long been required to litigate in state court as long as the State provides an adequate remedy. *See Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 112-16 (1981); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943). This rule applies not only to suits for equitable relief but also to actions for damages. It was in existence long before the Court held that section 1983 does not provide a remedy to challenge state taxes. *See National Private Truck*

Council, Inc. v. Oklahoma Tax Comm'n, 515 U.S. 582 (1995); *see also Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110 (1871). Among the reasons for this rule is that "federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts." *Fair Assessment*, 454 U.S. at 108 n.6 (internal quotations and citations omitted). It bears noting that taxpayers do not get a second opportunity to litigate in federal court following state court proceedings and are not entitled to reserve their federal claims. Rather, federal review can be obtained only by "seek[ing] review of the state decisions in this Court." *Id.* at 116.

Indeed, the reasons for requiring takings plaintiffs to litigate in state court are even stronger. First, land use regulation is a quintessentially state and local government function. *See Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Second, the law governing zoning, variances, and permitting is highly complex and federal constitutional questions are likely to turn on issues of state land use law. *Cf. Fair Assessment*, 454 U.S. at 108 n.6. Moreover, where "the parties invoke federal principles to challenge state administrative action, the courts of the State have a strong interest in integrating those sources of law within their own system for the proper judicial control of state officials." *Coeur d'Alene Tribe*, 521 U.S. at 276 (principal opinion of Kennedy, J.). *See also City of Chicago v. International College of Surgeons*, 522 U.S. 156, 185 (1997) (Ginsburg, J., dissenting) (recognizing "the vital interest States have in developing and elaborating state administrative law").

As the foregoing demonstrates, systemically the state courts are the proper forum for resolving these disputes. The Court should therefore reject the suggestion of petitioners' *amici* to overrule or modify *Williamson County*'s exhaustion of judicial remedies rule. And consistent with the Full Faith and Credit Statute and structural principles of federalism,

when a takings plaintiff is required to litigate in the state courts, the judgment of the state courts must be respected. Because petitioners had a full and fair opportunity to litigate in the California courts the issue of whether a taking occurred, this Court should reject their attempt to relitigate the issue in the federal courts.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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